

MARY ANN SMITH
Deputy Commissioner
SEAN M. ROONEY
Assistant Chief Counsel
DANIELLE A. STOUMBOS (State Bar No. 264784)
Counsel
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013
Telephone: (213) 576-7591
Facsimile: (213) 576-7181

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:	)	FIL ORG ID.: 137613
)	
THE COMMISSIONER OF BUSINESS	)	FINAL STOP ORDER DENYING
OVERSIGHT,	)	EFFECTIVENESS OF FRANCHISE
	)	RENEWAL REGISTRATION APPLICATION;
Complainant,	)	AND
)	
v.	)	FINAL CITATION INCLUDING:
)	
GLENN CYBULSKI (an individual), and	)	(1) DESIST AND REFRAIN ORDER
PERSONA PIZZA HOLDINGS LLC,)	
	)	(2) ASSESSMENT OF ADMINISTRATIVE
Respondents.	)	PENALTIES
)	
	)	(3) CLAIM FOR ANCILLARY RELIEF AND
	)	COSTS
)	

Complainant, the Commissioner of Business Oversight for the State of California
("Commissioner") is informed and believes, and based on such information and belief, finds as
follows:

I
Introduction

1. Persona Pizza Holdings LLC ("Persona Pizza") was created as a Florida Limited
Liability Company on January 7, 2013 and converted to a Delaware Limited Liability Company on

1 November 27, 2013. Persona Pizza’s principal business address is 6538 Collins Avenue, # 182,
2 Miami Beach, Florida 33141.

3 2. Glenn Cybulski (“Cybulski”) is Persona Pizza’s chief executive officer. Cybulski
4 was Persona Pizza’s chief operating officer and chef from on or around November 27, 2013 through
5 around April 2015.

6 3. Mr. Joseph Baumel (“Baumel”) is Persona Pizza’s Founder and manager. Baumel
7 was Persona Pizza’s chief executive officer from on or around November 27, 2013 through around
8 April 2015.

9 4. The Commissioner is the head of the Department of Business Oversight and is
10 responsible for administering and enforcing the California Franchise Investment Law (“FIL”)
11 (Corporations Code § 31000, et seq.),¹ and registering the offer and sale of franchises in California.

12 5. To register a franchise, a franchisor must file a Uniform Franchise Disclosure
13 Document (“Franchise Disclosure Document”) with the Department for review and approval, in
14 accordance with sections 31111 and 31114.

15 6. The disclosure requirements of the FIL are intended to avoid misrepresentations and
16 to provide prospective franchisees with facts upon which to make an informed decision to purchase
17 a franchise, as stated in section 31001.

18 **II** **Statement of Facts**

19 **A.**

20 **Commodities Futures Trading Commission Takes Action Against Cybulski**

21 7. On February 6, 2001, the Commodity Futures Trading Commission (“CFTC”) filed
22 an Amended Complaint and Notice of Hearing against Joyce Roeder, Currency Trading Systems,
23 Glenn Cybulski, and Michael Stewart. The Amended Complaint alleged that Cybulski violated
24 section 40(1) of the Commodities Futures Modernization Act of 2000 (“CFMA”), 7 U.S.C. § 60(1),
25 and Section 4.41(a) of the Commission’s Regulations, 17 C.F.R. § 4.41(a).
26
27

28 ¹ All further statutory references are to the Corporations Code unless otherwise indicated.

- a. desist and refrain from violating Section 4o(1) of the CFMA, 7 U.S.C. § 6o(1), and Section 4.41(a) of the Commission's Regulations, 17 C.F.R. § 4.41(a);
- b. pay restitution in the amount of \$23,073.95 to investors; and
- c. pay a civil monetary penalty in the amount of \$85,934.45 to the CFTC.

B.

11. On March 18, 2014, Persona Pizza filed a Franchise Registration Application with the Department pursuant to section 31111 (the “Initial Application”). The Initial Application disclosed Cybulski as Persona Pizza’s Chief Operating Officer (“COO”) and Baumel as its Chief Executive Officer (“CEO”) and Manager.

13. Persona Pizza failed to disclose the CFTC Order in its Initial Application.

14. Applicants are further required to identify, on a Franchise Seller Disclosure Form, all persons who will solicit, offer, or sell franchises in California. Applicants are required to disclose whether any sales person:

Is subject to a currently effective injunction or restrictive order or decree resulting from a pending or concluded action brought by a public agency and relating to the franchise, or to a Federal, State or Canadian franchise, securities, antitrust, trade regulation or trade practice law?

15. Persona Pizza submitted a Franchise Seller Disclosure Form for Cybulski. The above question was answered “No.”

16. An officer of the applicant is required to review the Franchise Disclosure Document and certify its accuracy to the Commissioner. Bauman signed the following notarized certification on behalf of Persona Pizza, dated March 17, 2014:

I certify and swear under penalty of perjury of law that I have read and know the contents of this application, including the Franchise Disclosure Document with an issuance date of February 21, 2014, attached as an exhibit, and that all material facts stated in all those documents are accurate and those documents do not contain any material omissions. I further certify that I am duly authorized to make this certification on behalf of the Franchisor and that I do so upon my personal knowledge.

17. The Department issued an order allowing Persona Pizza to offer and sell franchises in California on April 4, 2014. Under this order, Persona Pizza’s franchise registration was effective through April 20, 2015.

C.
Persona Pizza Applies For Franchise Renewal Registration Again Failing to Disclose Cybulski Action

18. On April 1, 2015, Persona Pizza filed a franchise renewal registration application with the Department (“Renewal Application”).

19. Cybulski was again listed as the COO and Baumel as the CEO and Manager.

20. Persona Pizza again failed to disclose the CFTC Order in the Renewal Application.

21. Persona Pizza submitted a Franchise Seller Disclosure Form for Cybulski, asking whether Cybulski:

Is subject to a currently effective injunction or restrictive order or decree resulting from a pending or concluded action brought by a public agency and relating to the franchise, or to a Federal, State or Canadian franchise, securities, antitrust, trade regulation or trade practice law?

22. The above question was answered “No.”

23. Bauman again signed the following notarized certification on behalf of Persona Pizza, dated March 30, 2015:

I certify and swear under penalty of perjury of law that I have read and know the contents of this application, including the Franchise Disclosure Document with an issuance date of January 30, 2015, attached as an exhibit, and that all material facts stated in all those documents are accurate and those documents do not contain any material omissions. I further certify that I am duly authorized to make this certification on behalf of the Franchisor and that I do so upon my personal knowledge.

III **Stop Order**

24. Corporations Code section 31115 provides, in relevant part:

The commissioner may summarily issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration if the commissioner finds:

(a) That there has been a failure to comply with any of the provisions of this law or the rules of the commissioner pertaining thereto.

...

25. Corporations Code section 31200 provides:

It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice or report filed with the commissioner under this law, or willfully to omit to state in any such application, notice, or report any material fact which is required to be stated therein, or fail to notify the commissioner of any material change as required by Section 31123.

26. Based upon the foregoing findings, the Commissioner is of the opinion that Glenn Cybulski and Persona Pizza, in violation of section 31200, willfully made untrue statements of material fact in applications filed with the Commissioner or omitted to state material facts which were required to be stated in the applications filed with the Commissioner.

27. Pursuant to section 31115, Persona Pizza’s Renewal Application filed with the
28 Commissioner on April 1, 2015, is hereby denied. This order is necessary, in the public interest, for

1 the protection of investors and franchisees, and consistent with the purposes, policies, and
2 provisions of the California Franchise Investment Law. This order shall remain in effect until it is
3 modified or vacated by the Commissioner.

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5 **IV**
6 **Citation**

7 28. Section 31406 provides in relevant part:

8 (a) If, upon inspection or investigation, based upon a complaint or
9 otherwise, the commissioner has cause to believe that a person is violating
10 any provision of this division or any rule or order promulgated pursuant to
11 this division, the commissioner may issue a citation to that person in
12 writing describing with particularity the basis of the citation. Each citation
13 may contain an order to desist and refrain and an assessment of an
administrative penalty not to exceed two thousand five hundred dollars
(\$2,500) per violation and shall contain reference to this section, including
the provisions of subdivision (c). All penalties collected under this section
shall be deposited in the State Corporations Fund.

14 (b) The sanctions authorized under this section shall be separate from, and
in addition to, all other administrative, civil, or criminal remedies.

15 (c) If within 60 days from the receipt of the citation, the person cited fails
16 to notify the commissioner that the person intends to request a hearing as
described in subdivision (d), the citation shall be deemed final.

17 (d) Any hearing under this section shall be conducted in accordance with
18 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
Title 2 of the Government Code.

19 (e) After the exhaustion of the review procedures provided for in this
20 section, the commissioner may apply to the appropriate superior court for
21 a judgment in the amount of the administrative penalty and order
22 compelling the cited person to comply with the order of the commissioner.
The application shall include a certified copy of the final order of the
23 commissioner and shall constitute a sufficient showing to warrant the
issuance of the judgment and order.

24 29. **Desist and Refrain Order.** Based upon the foregoing findings, the Commissioner is
25 of the opinion that Glenn Cybulski and Persona Pizza, in violation of section 31200, willfully made
26 untrue statements of material fact in applications filed with the Commissioner or omitted to state
27 material facts which were required to be stated in the applications filed with the Commissioner.
28

Pursuant to section 31406, Cybulski and Persona Pizza are hereby cited and ordered to desist and refrain from further violations of section 31200.

30. This order is necessary, in the public interest, for the protection of franchisees and consistent with the purposes, policies and provisions of the FIL.

31. **Administrative Penalties.** Pursuant to section 31406, Persona Pizza is hereby assessed and ordered to pay an administrative penalty of \$5,000.00, which consists of a penalty of \$2,500.00 for each of the two violations of sections 31200 recited above.

32. The administrative penalties in the amounts stated above shall be made payable to the Department of Business Oversight and submitted to Danielle A. Stoumbos, Counsel, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, no later than sixty (60) days from the date of this order.

V

Ancillary Relief and Fees

33. Section 31408 provides in relevant part:

(a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this division, including a stop order, a claim for ancillary relief, including, but not limited to, a claim for rescission, restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief. The person affected may be required to attend remedial education, as directed by the commissioner.

(b) In an administrative action brought under this part the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include any amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations.

34. **Remedial Education.** Within sixty (60) days of the date of this order, pursuant to section 31408, Cybulski and all persons employed by Persona Pizza who assist in preparing franchise registrations or who assist in franchise selling are hereby required to attend remedial education, which shall consist of eight (8) hours of franchise law training courses per person offered

1 by instructors that are acceptable to the Commissioner. Proof of attendance of the remedial
2 education shall be submitted to Danielle A. Stoumbos, Counsel, 320 West 4th Street, Suite 750, Los
3 Angeles, California 90013-2344, no later than ninety (90) days from the date of this order.

4 35. **Rescission and Restitution.** Due to the Commissioner's finding that Persona Pizza
5 has committed violations of section 31200, Persona Pizza shall afford all Persona Pizza
6 franchisee(s) the right to rescind any contract for the purchase of a franchise. Persona Pizza is
7 hereby ordered to comply with the provisions of section 31303 and Title 10 of the California Code
8 of Regulations, Rule 310.303 within sixty (60) days of this order, by submitting a proposed notice
9 of violation and rescission offer to the Department for review and approval to Gillian Small,
10 Corporations Counsel, Securities Regulation Division, 100 Sansome Street, Suite 600, San
11 Francisco, California 94104. Upon the Commissioner's approval, Persona Pizza is hereby ordered
12 to mail a copy of the approved notice of violation and rescission offer to each franchisee.

13 Persona Pizza is hereby ordered to pay restitution to every franchisee that accepts its offer of
14 rescission for the actual cost of the initial franchise fee and fees and costs paid by the franchisee,
15 according to proof. Each franchisee shall be given ninety (90) days from receipt of the offer of
16 rescission to elect to rescind. Personal Pizza shall pay restitution to each franchisee electing
17 rescission within sixty (60) days of receiving any acceptance to rescind.

18 36. **Attorney's Fees.** Pursuant to section 31408, subdivision (b), Persona Pizza shall pay
19 attorney's fees and investigative expenses to the Department of Business Oversight in the amount
20 of \$1,000.00 or according to proof. The amount awarded for attorney's fees and investigative
21 expenses shall be made payable to the Department of Business Oversight and submitted to Danielle
22 A. Stoumbos, Counsel, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, no
23 later than thirty (30) days from the date of this order.

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1 37. This order is necessary, in the public interest, for the protection of investors and
2 franchisees and consistent with the purposes, policies and provisions of the Franchise Investment
3 Law.

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5 Dated: September 1, 2015
6 Sacramento, California

JANN LYNN OWEN
Commissioner of Business Oversight

7
8
9 By _____
10 MARY ANN SMITH
11 Deputy Commissioner
12 Enforcement Division
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